

Appl. No. 09/900,359

Reply to Office Action of 5/20/2005

**REMARKS/ARGUMENTS**

Claims 1 – 15, 40, 51 and 52 are presented for the Examiner's consideration. Claims 41 – 50 have been withdrawn at this time pending the allowance of independent claim 1 from which they depend. Claims 10 – 14 have been amended to correct the grammatical mistake resulting from the prior amendment where an extra "the" was not deleted. Pursuant to 37 C.F.R. § 1.111, reconsideration of the present application in view of the foregoing amendments and the following remarks is respectfully requested.

Claim 1 stands rejected under 35 U.S.C. § 112 as indefinite with regard to the term "rigid port." The Applicants respectfully traverse the Examiner's indefinite rejection. The Applicants have defined "rigid" at page 5, line 29 through page 6, line 3. Furthermore, the term "port" as used in the context of wet wipes dispensers is clear to one of ordinary skill in the art. As evidence of this, Chasid, EP 0 930 243 A1, in the background of the invention, discusses U.S. patent 5,582,294 as having a lid unit mounted onto an opening in the bag that includes a pick-up port. Additional evidence that the term "rigid port" is clear to one of ordinary skill in the art of wet wipes dispensers is U.S. patent 6,523,690, which discusses a dispenser comprising a rigid port surrounding a flexible rubber-like material having one or more slits. The term "rigid port" appears in independent claims 1 and 13 of the '690 patent. Thus, the term "port" or "rigid port" in conjunction with wet wipes dispensers is commonly used by those of skill in the art and not indefinite as asserted by the Examiner. As such, the Examiner's indefinite rejection has been overcome by the showing of prior common usage in the patent art.

Claims 1 – 15, 40, 51, and 52 stand rejected under 35 U.S.C. § 103(a) as unpatentable over EP 0 930 243 A1 published by Chasid. Chasid discloses a wet wipes package including a flexible pouch 22, having a rigid base member 3 and a lid 7 for closing an opening 25 in the pouch. Additionally, Chasid discloses two firm, but resilient flaps 9 located in the opening through which the wet wipes are dispensed as seen in Figure 3. However, the flaps of Chasid, while flexible at a fold line, are made from a rigid material. Chasid expressly states at paragraph 23:

In order to insure that a single tissue is extracted at each time on the one hand and, on the other hand, to prevent extracting moisture from the wet tissues during extraction thereof, **the flaps are made of an essentially rigid material and comprise a fold-line imparting them some resiliency.** (Emphasis supplied.)

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Chasid further states at column 6, lines 2 – 9, that the opening 5 of the base member 3 is provided at opposite sides thereof with a pair of firm but resilient flaps 9. Chasid further states that the resiliency of the flaps 9 is obtained by forming one or more fold lines on the flaps that are not shown in the drawings. Similarly at column 6, lines 44 – 48, Chasid states: "... resiliency of these flaps is obtained by providing a fold line 59, whereby the flaps 56 may be upwardly folded for access to the opening of the package as explained in connection with Figs. 3 and 4." Chasid clearly teaches that the flaps are made of a rigid material and the flexibility is imparted by the fold line and not through the flexibility of the material forming the flap. As such, Chasid discloses a common wet wipes dispenser wherein rigid flaps are hingedly attached adjacent to the dispenser's opening by living hinges or fold lines to restrict the sheet material being dispensed. Such rigid flaps are not a "flexible elastic sealing orifice" as claimed by the Applicants.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicants' disclosure. See MPEP § 2143 citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Chasid fails to disclose or suggest a "flexible elastic sealing orifice" sealing a rigid port and having a continuous slit. As such, a *prima facie* case of obviousness has not been established. In fact, Chasid teaches away from the claimed invention since Chasid expressly teaches that the flaps should be made of a rigid material. The rigid flaps of Chasid are attached to the base by fold lines. The rigid flaps are not a "flexible elastic sealing orifice" as claimed and described by the Applicants. The Applicants define a "flexible elastic sealing orifice" as having specific properties at page 5, lines 13-21. The specific properties for the flexible elastic sealing orifice provide a rubber-like member that is capable of flexing and bending without the need for fold lines as required by Chasid. Furthermore, the specific properties for the "flexible elastic sealing orifice" are not disclosed or suggested by Chasid. The flaps of Chasid would be

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"rigid" as that term is used and defined by the Applicants at page 5, line 30 of the specification. The flaps of Chasid are likely made from the same hard plastic material used to form the base member and the lid of the dispenser.

For the reasons stated above, it is respectfully submitted that all of the presently presented claims are in form for allowance. Since the pending rejection to independent claim 1 has been overcome, it is respectfully submitted that the withdrawn claims 41 - 50, which depend on claim 1, are also in a form for allowance. Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875. The undersigned may be reached at: (920) 721-7760.

Respectfully submitted,

MICHAEL J. FAULKS ET AL.

By



Scott A. Baum

Registration No.: 51,237

Attorney for Applicant(s)

## CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (571) 273-8300 on August 17, 2005.

By



Lanette Burton